

1           In 1996, we were approached by the Fox  
2       Television Network about switching WVBT's network  
3       affiliation to Fox. Fox had undertaken a campaign to  
4       have all of its affiliates carry local news at 10  
5       o'clock. The Fox affiliate in Norfolk had declined to  
6       do so. It wasn't a surprising decision for a single  
7       station with virtually no news infrastructure. It  
8       would have been years, if ever, before the 10 o'clock  
9       news would have been financially viable in the highly  
10      competitive Norfolk market.

11           WAVY, however, was already producing five  
12      hours of local news a day. Adding a first class local  
13      news program at 10 o'clock could be undertaken for  
14      fairly modest capital investment and increase our  
15      operating costs under \$1 million.

16           So in August of 1998, WVBT became the Fox  
17      affiliate. At that time, we initiated the first and  
18      still the only 10 o'clock broadcast news in the  
19      Norfolk market. This newscast which was initially a  
20      half hour is now 45 minutes, has given viewers in the  
21      Norfolk market **an** additional news option. Moreover,  
22      it unquestionably expanded the local late news viewing  
23      in the market. WVBT's newscast has recently generated  
24      a Nielsen rating of **4.9** or about 33,000 households.

25           Since the 10 p.m. newscast went on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 air, the cumulative total news viewing in late news  
2 viewing has grown from 141,000 households to 189,000  
3 households in the most recent rating book, an increase  
4 of more than 33 percent, substantially faster than the  
5 market was growing.

6 Local news is by no means the only  
7 contribution WVBT has made to the Norfolk media  
8 marketplace. In addition to first class syndicated  
9 programming, we've carried a wide variety of local  
10 sports and produced a substantial amount of local  
11 sports and public affairs programming. And because of  
12 WAVY's resources, an investment of over \$4 million,  
13 WVBT has been able to construct its expensive new  
14 digital television facility on time and is now  
15 providing Fox widescreen programming to the market.

16 This station combination is emphatically  
17 in the public interest. Many, many more such  
18 beneficial combinations are being precluded by the  
19 actions of outdated local TV ownership rules. This is  
20 particularly true in smaller markets where there is  
21 simply inefficient resources to support more than one  
22 or two high quality news operations. But, as my  
23 experience in Norfolk demonstrates, the current rule  
24 is preventing efficient and productive combinations  
25 and suppressing potentially vital new local voices

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

w.nealrgross.com

1 even in the top 50 markets.

2 I urge you to act promptly to recognize  
3 the realities of the new local media marketplace and  
4 relax the local station ownership rule by adopting the  
5 proposal put forth in the comments of the National  
6 Association of Broadcasters and permit common  
7 ownership of any two stations provided that no one has  
8 more than a 10 percent share of the viewing market.

9 Thank you.

10 MR. KRATTENMAKER: Dr. Owen?

11 DR. OWEN: Thank you, Mr. Chairman,  
12 Commissioners, Mr. Moderator. I'm an economist and a  
13 competition economist. I was once chief economist of  
14 the Antitrust Division of the Justice Department and  
15 I'm here to talk about competition because that's what  
16 the panel is supposed to be about.

17 I hope after discussing competition  
18 briefly to link it to the diversity issues that you  
19 face. I don't -- I think the localism issues are  
20 impervious to logic, so I won't address those.

21 Competition obviously is an important goal  
22 and in fact, your statute that requires these biennial  
23 reviews mentions only competition and not diversity in  
24 the context of what's necessary to retain the rules  
25 for the future.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Competition brings benefits to consumers.  
2       The point of competition is to benefit consumers, in  
3       this case, viewers, readers and listeners. You don't  
4       write on a blank slate here. You don't need to invent  
5       a new wheel to deal with competition policy analysis  
6       when you're analyzing proposed mergers in the mass  
7       media. There's a perfectly adequate widely accepted  
8       and even admired paradigm for analyzing mergers and  
9       that is the merger guidelines that are used as a  
10      method of analysis by both the Federal Trade  
11      Commission and the Department ~~of~~ Justice.

12           The Commission has, in fact, demonstrated  
13      its understanding and ability to use their analytical  
14      tools in its recent decision in the Echo Star-Direct  
15      TV merger. So I'm not suggesting anything novel. You  
16      don't need to invent a new way to think about these  
17      things from the point of view of competition in  
18      economic markets. By economic markets I mean  
19      advertising markets and consumer markets for MBPV  
20      services.

21           I think the Commission in approaching  
22      media ownership issues, ~~if~~ it's going to pass a  
23      rationality test has to employ an approach that is  
24      consistent with the method, not necessarily the  
25      standard, but the methods in the merger guidelines.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 And there's no reason to try and do it in a different  
2 way.

3 That means that the present rules, if they  
4 are put up against that standard, don't make any  
5 sense. They don't pass a rationality test. For  
6 example, when you apply the method of analysis that's  
7 used in the merger guidelines, you're not likely to  
8 find that markets are always defined in terms of  
9 technologies or means of broadcasting or frequencies.  
10 They're defined in terms of the choices that consumers  
11 have. And those choices can, and do, cut across lots  
12 of different technologies and methods of broadcasting.  
13 So any rule that applies only to television, for  
14 example, prejudices the market definition appropriate  
15 to a particular merger transaction and that doesn't  
16 make any sense. You can't do that in advance.

17 So fixed market boundaries as reflected in  
18 rules almost by definition can't pass a rationality  
19 test. Moreover, even if they did, in this business,  
20 market boundaries are changing quickly and have been  
21 changing for some years, so a rule that reflects even  
22 a correct, analytically correct analysis of where the  
23 market boundaries are, will be out of date and as we  
24 all know, even though they have to be reviewed every  
25 two years, it's hard to change rules.

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

**1323 RHODE ISLAND AVE., N.W.**

**WASHINGTON, D.C. 20005-3701**

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           The final thing to keep in mind when  
2           thinking about economic markets, advertising markets  
3           and consumer markets, is that most mergers, the vast  
4           majority ~~of~~ mergers are beneficial, that is, they  
5           result in efficiencies or new products or new  
6           services. In the economy as a whole, of the hundreds  
7           and hundreds of transactions that take place every  
8           year, only a tiny fraction of them raise antitrust  
9           concerns and they are quite properly reviewed to see  
10          if they past muster under the antitrust laws.

11           But the presumption is that a merger is  
12          pro-competitive absent a showing by the government  
13          that it isn't. It doesn't go the other way around.

14           Now the Commission can apply the  
15          guidelines or its own version of the guidelines with  
16          its own standards, and the antitrust authorities, of  
17          course, have an obligation to do the same thing. That  
18          would result in a certain amount of duplication, even  
19          a great deal of duplication, whether that duplication  
20          is wasteful or not is something for the Commission to  
21          consider. I don't offer an opinion on that.

22           If you apply merger guidelines analysis,  
23          economic analysis that's designed to tell whether or  
24          not consumers are likely to be injured by a particular  
25          merger, based on the facts of that merger, then I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 2344433

[www.nealrgross.com](http://www.nealrgross.com)

1 think you'll find that your diversity concerns are  
2 also addressed automatically. In principle, you could  
3 have a merger that reduced diversity unduly even  
4 though it didn't offend the antitrust laws, didn't  
5 reduce competition.

6 MR. KRATTENMAKER: Your time has expired.  
7 Are you summarizing?

8 DR. OWEN: Yes. I'll stop there.

9 MR. KRATTENMAKER: Okay, thank you. Mr.  
10 Rintels?

11 I'm sorry, this is not part of your time.  
12 I should mention here again that one **of** the things  
13 we've done is to provide opportunities for people who  
14 would like to propose questions that might be asked of  
15 the panel. There are cards in the back of the room,  
16 **if** you want to write a question. People will  
17 circulate, pick the questions up and we'll -- there's  
18 a woman over there with her hand up. We'll bring the  
19 questions up to me and if there's an opportunity, I  
20 will ask them. I've already got several for this  
21 panel, but I'd be happy **to** receive more.

22 Excuse me, Mr. Rintels.

23 MR. RINTELS: Thank you, as a Virginian, a  
24 native Virginian, I want to thank the Commission for  
25 slogging through the Old Dominion slush to be here

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

w.nealrgross.com

1 today to hear our thoughts about media concentration.

2 My name is Jonathan Rintels. I'm a screen  
3 writer and the executive director for the Center for  
4 the Creative Community, a nonprofit that conducts  
5 research, public education and policy development on  
6 behalf of the tens of thousands of writers, directors,  
7 producers and performers, who create America's popular  
8 and literary entertainment. Numerous winners of  
9 Oscars, Emmys. Tonys, Peabodys and other awards for  
10 creative excellence serve on our Board of Advisors.

11 Today, the conventional wisdom is that a  
12 500-channel universe assures viewpoints from a  
13 diversity of sources and competition in the  
14 marketplace of ideas. But as respected Wall Street  
15 analyst Tom Wolzien concludes in his research study  
16 dated February 7th and entered in the record this  
17 morning, the reality of today's modern median  
18 environment is quite different. Five corporations  
19 with their broadcast and cable networks are now on the  
20 verge of controlling the same number of television  
21 households as the Big Three broadcast networks did 40  
22 years ago.

23 In the past, when three or four broadcast  
24 networks controlled this many households, the  
25 Commission protected the public's interest in

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

**1323 RHODE ISLAND AVE., N.W.**

**WASHINGTON, D.C. 20005-3701**

**(202) 234-4433**

**[www.nealrgross.com](http://www.nealrgross.com)**



1 competition, the marketplace of ideas and diversity of  
2 viewpoints by requiring independent production of  
3 programming. But today, the American public has no  
4 protection. Data in this record prove this  
5 programming oligopoly, Wolzien's term, not mine,  
6 exists both in the distribution and production of  
7 programming. For example, NBC owns outright or holds  
8 a significant financial interest in 100 percent **of** the  
9 new series on its schedule this season. The other  
10 networks are not far behind. Rather than compete  
11 fairly in the marketplace **of** ideas, the networks  
12 leverage their control of the publicly owned airways  
13 to take over television program production, driving  
14 small businesses and creative entrepreneurs, many **of**  
15 whom were women and minorities, out of business.

16 President Bush recently said small  
17 business owners represent the enterprise **of** the whole  
18 nation and the diverse talents **of** our people.  
19 America's economy can thrive only when our small  
20 businesses thrive. Television is not different. The  
21 near extinction of creative entrepreneurs and small  
22 businesses has resulted in corporate homogenized bland  
23 programming. Even network executives agree. Their  
24 quotes are in this record.

25 While there are many highly regarded shows

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 2344433

[www.nealrgross.com](http://www.nealrgross.com)

1       such as "West Wing" nearly all are independently  
2 produced, such as "West Wing," hold overs from when  
3 program source diversity was required. The networks  
4 themselves have produced little to take their place as  
5 evidenced by NBC's decision to spend \$10 million per  
6 episode of one more seasons of "Friends."

7               Research shows many Americans receive  
8 their information regarding democracy, politics, news,  
9 values, history and culture from television  
10 entertainment programming. Thus, in this proceeding,  
11 the stakes for our nation are far higher than whether  
12 we will all be doomed to a future of bland television.  
13 When promoting the wide dissemination of information  
14 from a multiplicity of sources is a government  
15 interest of the highest order, Commission action is  
16 indisputably necessary in the public interest as the  
17 law requires.

18               Today's internet does not obviate the need  
19 for the Commission to act. The same programming  
20 oligopoly controls the most visited sites on the net.  
21 Moreover, in much of Virginia, including my own home,  
22 broadband is a distant rumor. Even among Virginia  
23 families fortunate enough to have broadband, I've yet  
24 to hear of any that microwave popcorn and gather  
25 around the computer to watch internet. They watch

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE , N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 television.

2           The reemergence of the programming  
3 oligopoly requires that the Commission create a new  
4 program source diversity rule that allows independent  
5 producers access to network schedules. And there's no  
6 question the Commission has the power to create this  
7 rule in this proceeding as the Coalition for Program  
8 Diversity reply comments demonstrate. Such a rule  
9 will meet all the goals of the Commission in this  
10 proceeding. It will provide citizens with viewpoints  
11 from a diversity of sources. It will enhance the  
12 marketplace **of** ideas. It will reflect the reality of  
13 the modern media environment in which the re-emerging  
14 programming oligopoly is eliminating both economic and  
15 creative competition. It will promote participation  
16 in ownership by minorities, women and small businesses  
17 in television.

18           This rule, this win-win-win rule will also  
19 withstand future judicial scrutiny. This record is  
20 full of data and other evidence documenting the re-  
21 emergence of this programming oligopoly and the harm  
22 it has caused. **As** with the Commission's legal  
23 authority to create this rule, Judge Posner wrote in  
24 Schurz Communications, "The Commission could always  
25 take the position that it should carve out a portion

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 of the production and distribution markets and protect  
2 them against the competition of the networks in order  
3 to foster a diversity of programming sources and  
4 outlets."

5 It is now necessary in the public interest  
6 for the Commission to take that position. Promoting  
7 the widespread dissemination of information from a  
8 multiplicity of sources is the government interest of  
9 the highest order in this proceeding. Increasing the  
10 profits of a handful of corporations is not.

11 Thank you.

12 (Applause.)

13 MR. KRATTENMAKER: Thank you. Mr.  
14 Winston, welcome back to the Commission.

15 MR. WINSTON: Good afternoon, Chairman  
16 Powell, Commissioner Martin, Commissioner Abernathy,  
17 Mr. Copps, Mr. Adelstein. Thank you for inviting me  
18 to discuss the Commission's pending rulemaking  
19 proceeding, examining its broadcast ownership rules.  
20 I also thank you for inviting Alfred Liggins, a  
21 distinguished member of the NABOB Board of Directors  
22 earlier this morning.

23 NABOB is a trade association representing  
24 the interests of African-American owners of radio  
25 stations and television stations and cable television

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 systems across the United States. NABOB has  
2 participated in this proceeding to encourage the  
3 Commission not to relax further its multiple ownership  
4 rules. Since the passage of the Telecommunications  
5 Act of 1996 which significantly relaxed the  
6 Commission's ownership rules, the number of minority  
7 owners has dropped by 14 percent.

8 The first amendment rights of all  
9 Americans to receive a free flow of news and comment  
10 from all segments of the population will be damaged if  
11 minority ownership continues to be squeezed out of the  
12 business.

13 The Commission, the Congress and the  
14 courts have historically recognized that the ownership  
15 of broadcast stations must be disseminated among a  
16 wide number of voices to assure the first amendment  
17 rights of the American public are protected.

18 In its comments in this proceeding, NABOB  
19 has cited a significant amount of research,  
20 demonstrating that minority ownership promotes these  
21 first amendment rights by providing viewpoint  
22 diversity and promoting competition.

23 For this reason, NABOB has proposed in its  
24 comments that the Commission make no further  
25 relaxation of its rules. Instead, NABOB has proposed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 several improvements for the Commission's existing  
2 rules. The Commission should make permanent the  
3 Commission's interim policy for processing radio  
4 assignment of license and transfer of control  
5 applications. The Commission should improve the  
6 interim policy by flagging all transactions in which  
7 one entity will control 40 percent of the local  
8 advertising market or two entities will control 60  
9 percent of the advertising market and the Commission  
10 should use arbitron markets to define radio markets  
11 for application of the multiple ownership rule.

12 The Commission should include an interim  
13 policy, a review of the impact of minority ownership  
14 of flagged transactions.

15 The Commission should eliminate its policy  
16 of granting 6, 12 and 18 month waivers of its  
17 ownership rules. If a transaction will require one or  
18 more stations to be spun off, the parties should  
19 submit an application to spin those stations off at  
20 the time the transaction is filed.

21 The Commission should treat all local  
22 market agreements as attributable and should require  
23 that all agreements between noncommonly owned same  
24 market stations be filed with the Commission.

25 NABOB has also requested the Commission

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 support reinstatement of the minority cash  
2 certificate. NABOB commends the Commission for  
3 supporting Senator McCain's Small Business Tax  
4 Deferral Bill. We hope that legislation will be  
5 amended to specifically promote minority ownership.

6 I would also like to make an observation  
7 concerning one of the studies commissioned by the  
8 Commission in this proceeding. In that study, the  
9 Commission's researcher measured news slanting by  
10 commonly owned television stations and daily  
11 newspapers. This study is startling not for its  
12 conclusions, but for its premise. The study assumes  
13 news slanting exists and is a measurable phenomenon.  
14 It then proceeds to measure this phenomenon.  
15 Regardless of the conclusions reached in the study,  
16 the study's principal values demonstrate that news  
17 slanting exists. The existence of news slanting in  
18 and of itself requires retention of the Commission's  
19 ownership rules. Once we accept that news slanting  
20 exists as a measurable phenomenon, it becomes  
21 imperative to continue the Commission's policy of  
22 ensuring the dissemination of ownership control of the  
23 nation's airwaves among many different and  
24 antagonistic voices.

25 In its comments, NABOB cited research

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 showing that in most major markets the market leader  
2 has about 45 percent of advertising revenues and the  
3 top two firms control about 74 percent of advertising  
4 revenue. The research concluded that this resulted in  
5 highly concentrated markets with Herfindahl Hirschman  
6 indices exceeding 3,000 in many markets. Thus, NABOB  
7 submits that, given examples such as Ann Arbor where  
8 Clear Channel Communications currently has over 86  
9 percent ~~of~~ the local radio advertising market, the  
10 Commission should adjust its flagging procedure to  
11 flag transactions which would result in a single  
12 entity controlling more than 40 percent of market  
13 revenues or two entities controlling more than 60  
14 percent.

15 In conclusion, I would like to note that  
16 the principal issue before the Commission in this  
17 proceeding is what level of industry consolidation  
18 should be permitted when the Commission balances its  
19 often conflicting goals of promoting diversity,  
20 competition and localism. NABOB submits that in  
21 reaching a determination of how to balance these  
22 competing interests, the Commission should note that  
23 diversity and localism are the only two first  
24 amendment considerations falling into that balance.  
25 The promotion of first amendment rights is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 Commission's principal obligation and in the end, the  
2 promotion **of** diversity and localism must take  
3 precedence over the promotional competition.

4 Thank you.

5 MR. KRATTENMAKER: Thank you. Mr.  
6 Chairman, if I may, I think I'm going to usurp the  
7 prerogative of being moderator and ask the first  
8 question. And the reason for that is that I have here  
9 a stack of cards from the audience all of which ask  
10 essentially the same question in different phrase and  
11 I think we should start with this question. **I'm** going  
12 to particularly direct it at Ms. Foley and Professor  
13 Croteau, but I welcome comments from anybody. As  
14 somebody who taught antitrust for a while, I was not  
15 surprised by this.

16 How exactly is competition enhanced by  
17 removing the number of competitors? That's the way it  
18 was put on one of these cards. And I think that's the  
19 question that's on the minds of many in the audience.

20 I'd like to say we went alphabetically.  
21 As a result of that, we had three different responses  
22 to that already from the middle of the panel.

23 Bruce Owen has told us that if you take a  
24 competition focus, that means you're looking at the  
25 welfare **of** consumers or people who buy advertising and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 it may oftentimes be the case that a merger just  
2 doesn't harm those interests because it doesn't give  
3 anyone power to raise prices.

4 Mr. Munson said that sometimes what a  
5 merger can do is it can rescue an otherwise nonviable  
6 firm. It can provide resources that another firm  
7 might not have had. It can bring somebody from a home  
8 shopping network to being a network affiliate.

9 Mr. Miller says that the way competition  
10 can be enhanced by having fewer firms is that free  
11 over-the-air broadcasting is threatened by a number of  
12 economic factors, all of which require some level of  
13 consolidation if it's going to survive in the face of  
14 these competing new media.

15 Those, in sum, are the kinds of answers  
16 that some of our panelists have given and I wanted  
17 particularly to ask my wing people, whether you agreed  
18 with that or whether instead you do take the position,  
19 it would be a perfectly respectable position that  
20 competition is the number of people in a market and  
21 reducing that number just simply reduces competition.

22 Professor?

23 DR. OWEN: I think one of the interesting  
24 issues here that is coming up today is the  
25 interrelated nature of diversity, competition and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 localism, the fact that you can't simply isolate these  
2 things. They are interrelated. And so when we're  
3 talking about what is competition, it's not just pure  
4 numbers, obviously. We can't say in all cases that  
5 more necessarily means better content. The recent  
6 study from the Project for Excellence in Journalism,  
7 for example, showed that in fact when it comes to TV  
8 news, local news, smaller broadcast groups had better  
9 content in terms of serving the local community than  
10 larger ones did.

11 However, at the same time they also  
12 realized that sometimes groups do better than  
13 individual stations because they have more resources  
14 and so forth. And so this issue of competition is not  
15 directly tied to the number of entities competing.  
16 You have to look at the nuances in all of that, but I  
17 think that message that once you get to a certain  
18 level, larger and larger companies are not going to  
19 help us in terms of diversity and localism.

20 MR. KRATTENMAKER: Thank you. Ms. Foley,  
21 would you like to comment?

22 MS. FOLEY: Yes, just briefly. First of  
23 all, I come from a journalism background and I come  
24 from a news background and so I do care very much  
25 about localism and much less about pure competition.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 And I think that when it comes to news and when it  
2 comes to reporting the news and setting the local  
3 news agenda it very much depends upon the number of  
4 players. Because if you don't have competing  
5 antagonistic sources, you're going to have one entity  
6 **or** few entities setting the news, so anybody who's  
7 ever worked in a newsroom notes that competition is  
8 what drives the news agenda. It's what drives  
9 reporters to go out there and beat the competition, to  
10 scoop their fellow reporters. So I think from my  
11 perspective, it absolutely does matter.

12 MR. KRATTENMAKER: Thank you. Mr.  
13 Rintels, did you want to comment?

14 MR. RINTELS: With regard to the  
15 nationwide rules, I know the Commission has asked in  
16 its notice of rulemaking whether it dare say the dual  
17 network rule if two networks would merge together  
18 whether they would then discretely target programming  
19 to one audience on one network and one audience on  
20 another network because that would be in their  
21 competitive interests.

22 Prior history has shown that that's not  
23 the reality at all, that when CBS and UPN were under  
24 common Viacom ownership that UPN simply reran CBS  
25 programming rather than get original programming for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[w.nealrgross.com](http://w.nealrgross.com)

1 its own discrete audience. And the same occurs with  
2 Mothership Broadcast ABC network than being rerun on  
3 satellite ABC Family and other networks owned by the  
4 same parent company.

5 MR. KRATTENMAKER: Thank you. Mr.  
6 Winston, did you want to comment?

7 MR. WINSTON: Yes. I just wanted to say  
8 that as was pointed out a minute ago, the issues  
9 addressed by the Commission here, localism, diversity,  
10 competition, are interrelated. They can't be  
11 separated out. And depending upon how you define  
12 competition, it requires diversity and localism and  
13 it's not something that can be separated out as simply  
14 as might be suggested by someone from the panel.

15 MR. KRATTENMAKER: Dane, can you remind us  
16 when are we shooting for public mike comments?

17 MR. SNOWDEN: We're shooting at 2 o'clock.

18 MR. KRATTENMAKER: We'll go somewhat  
19 beyond that. I've been keeping you from the  
20 Commissioners for a long time. I shouldn't do that  
21 anymore. I should turn this over to the  
22 Commissioners.

23 COMMISSIONER ADELSTEIN: I had a question  
24 for Mr. Owen and maybe Professor Croteau, you could  
25 follow up on this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   We're both Stanford men.     It's good to  
2     have you here.     I was in the History Department.  
3     You're over at Economics and they're not that far  
4     apart in the quad, but it seems like they're miles  
5     away here because I have a different reading of the  
6     statute than you do as far as what it means.

7                   You said, if I understood you correctly,  
8     that it was about competition, the new standard, but  
9     if you look at the broader context it said whether  
10    it's in the public interest in light of competition.  
11    **So** we look at, as a historian or somebody is looking  
12    at the legal history of this, the Agency traditionally  
13    has looked at the public interest as being about  
14    competition and localism and diversity.

15                  So I'd be curious if **you** really believe  
16    that we don't have to look at those two as issues in  
17    the public interest, and then if you could explain  
18    that in light of the example that we heard about the  
19    Richmond experience, since that's the one local  
20    example that we have, as whether or not the public  
21    interest was served in this case. I don't think you  
22    believe it was. I'd like to hear your response to  
23    that.

24                  DR. OWEN: I think this is the way legal  
25    points should be debated, between economists and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 historians.

2 (Laughter.)

3 The public interest means whatever the  
4 Commission says it means. And then the courts, of  
5 course...

6 I think that it's a perfectly sensible  
7 thing to worry about diversity from a competition  
8 point of view because you can think about the  
9 marketplace of ideas metaphor, using the same tools  
10 that you do to think about economic marketplaces. How  
11 many competitors are there, how many sources are  
12 there, what are the barriers to entry, what  
13 alternatives are available to consumers?

14 I think if you do that, what you discover  
15 is that the choices available to consumers are far  
16 wider than the choices available to advertisers and as  
17 a result, markets in the marketplace of ideas are  
18 going to be defined much more broadly. And therefore,  
19 if you worry about economic concentration, economic  
20 markets, you'll automatically take care of in most  
21 cases, automatically take care of your diversity  
22 concerns.

23 The other thing that I would say about  
24 that is that measuring market shares in the  
25 marketplace of ideas requires you to treat each source

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 equally and not to weight them by their current  
2 popularity. The point of the first amendment is to  
3 make sure that unpopular ideas have access to the  
4 public. The public has choices. In antitrust, there  
5 are certain markets where you give every competitor,  
6 despite their current market share equal weight. And  
7 I think the same principles should apply when you're  
8 measuring concentration in the marketplace of ideas.

9 After all, the popularity **of** a given media  
10 outlet is a demand side phenomenon. It's what people  
11 like to get, like to read, like to watch. It has  
12 nothing to do with the popularity of the source. The  
13 unpopular idea that we're trying to protect is by  
14 definition got a small audience. It's unpopular.

15 I probably used up more than my share of  
16 time here.

17 MR. KRATTENMAKER: Commissioner Copps?

18 COMMISSIONER COPPS: Yes, I'd like to ask  
19 Mr. Winston --

20 MR. CROTEAU: I'm sorry, I was asked to  
21 respond.

22 COMMISSIONER COPPS: My mistake, excuse  
23 me.

24 MR. CROTEAU: As we all know, there's  
25 often the --

**NEAL I. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 [END TAPE 3, SIDE A; BEGIN TAPE 3, SIDE  
2 B.]

3 -- my concern here is that there's too  
4 much discussion about creating formulas, whether  
5 they're economic formulas or otherwise that help to  
6 dictate public policy and I think we have to  
7 understand economic formulas, formulas to measure  
8 competition in the marketplaces and so forth, are  
9 useful tools. But they are part of a broader tool kit  
10 that we need to use, some of which has to do with  
11 experience and some common sense to be blunt about it.

12 And when you look at particular cases, how  
13 this actually works and particular markets, what  
14 actually happens in localities and I think that's why  
15 these sorts of hearings are so important to hear those  
16 stories, you find that a decline in numbers does mean  
17 something to those communities because it does mean a  
18 loss of competition very often and consequently that  
19 translates into a loss of local content, a loss of  
20 diversity and so on.

21 And so we have to supplement, I think, the  
22 economic theory with some other types of information  
23 that, in my opinion, are just as valid.

24 MR. KRATTENMAKER: Thank you, and pardon  
25 me. Commissioner Copps.

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202)234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   COMMISSIONER COPPS: Mr. Winston, we heard  
2 earlier in the panel earlier today that a number of  
3 radio station owners has dropped by over a third since  
4 1996. You pointed out in your eloquent testimony the  
5 number of minority owners has decreased by 13 percent.  
6 I'm hearing this from so many groups that minorities  
7 are now under represented in ownership and are poorly  
8 represented by the media and programming. I'm hearing  
9 it from your organization and the National Association  
10 of Black Owned Broadcasters. I'm hearing it from the  
11 Minority and Media in Telecommunications Council.  
12 Rainbow, PUSH and National Association of Hispanic  
13 Journalists, Church of Christ, Women's Institute for  
14 Freedom of the Press. It goes on and on. I'm also  
15 hearing that advertisers say that stations are  
16 ignoring minority communities that are critical target  
17 markets for their products.

18                   I gather what you're saying is not only  
19 don't abolish these rules, but you're saying we have  
20 pretty much reached the limit of what we can tolerate  
21 in changing the rules. I know I've talked to a lot of  
22 members in your group, as individuals, and some of  
23 them have done pretty well for themselves in the world  
24 of the media, but so many of them tell me that in the  
25 increasingly consolidated environment right now, they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

w.nealrgross.com

1 could not replicate the progress that they made. They  
2 wouldn't be where they are if they were starting out  
3 right now.

4 Could you comment on that and also on the  
5 question do you think we have really reached the limit  
6 on as far as we can go on some of these rules insofar  
7 as the impact on diversity is concerned?

8 MR. WINSTON: Well, certainly in the radio  
9 area. NABOB has focused primarily its comments in  
10 this proceeding on the radio area because we have  
11 significant number of stations that are owned by  
12 minorities. We have 240 stations that are owned by  
13 African-Americans in the radio industry. In  
14 television, there are only 20 television stations,  
15 some of them are fairly marginal stations. It's  
16 probably too late. The industry continues to  
17 consolidate. Even if you hold the line on your TV  
18 rules, minorities just do not have an opportunity to  
19 buy into that business.

20 In radio, as you pointed out, Radio One is  
21 our shining star. They're the folks that we all look  
22 up to and say we can do that one of these days. But  
23 the reality is that most minority owners are not going  
24 to be able to do what Radio One has done. And many  
25 are trying. But what we have found is that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 consolidation rules, the Clear Channels of the world,  
2 the Citadels, the Affinitys have too much of a head  
3 start.

4 I have current owners who call me all the  
5 time, "I bid for a station, Cumulus outbid me, Citadel  
6 outbid me, Clear Channel outbid me." So that with no  
7 national cap, it's very difficult to see how we're  
8 going to be able to continue to grow as owners and  
9 further relaxation of the rules only makes it worse.

10 COMMISSIONER COPPS: That's a really  
11 dramatic statement that everybody in this audience  
12 ought to pause to think about. It's already too late  
13 for the television and the radio situation in that  
14 dire situation too. Where we are right now, without  
15 further relaxing the rules. If that's not a big red  
16 stop sign, it's still cautionary in light of the first  
17 magnitude.

18 Does somebody else want to comment?

19 MR. VICTOR MILLER: I just want to say  
20 that let's not forget that since 1996 Salem, a  
21 Christian broadcaster who is now a public company.  
22 They weren't before that. Entrevision, an owner of  
23 Spanish language newspapers, magazines, outdoor and  
24 television stations is now a public company. They  
25 weren't before, 1996. Radio One was not a public

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 company. Spanish Broadcasting was not a public  
2 company. PAX, a Christian television broadcaster is  
3 also in the marketplace. So you can -- some certain  
4 broadcasters have taken advantage of the capital  
5 markets, like Alfred said this morning, decided that  
6 the rules had changed. They got in the game. They  
7 went into the public markets and they are now very  
8 viable public companies buying stations along with  
9 everybody else and outfitting a lot of other  
10 broadcasters for properties.

11 So there has been some benefit. We do  
12 have five, six public companies that didn't exist  
13 before the rules.

14 COMMISSIONER COPPS: I think Mr. Liggins  
15 made it pretty clear this morning that was kind of a  
16 question of fortuitous timing and taking advantage of  
17 some of the programs that we had at the Commission and  
18 what I'm hearing from Mr. Winston's members is trying  
19 to replicate that is very difficult.

20 Let me ask you another question. Mario  
21 Gabelli (Phonetic) who is known for his media  
22 expertise is predicting pretty widely that there's  
23 going to be a rush of takeovers and combinations in  
24 broadcasting and newspapers if we significantly change  
25 these rules. You're an expert analyst, but I'd like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 other people to chime in on this too.

2 What do you think is going on out there  
3 right now if we would eliminate some of these caps?  
4 Would we have a rush to consolidation or -- what do  
5 you foresee and what do some of your analysts see down  
6 there?

7 MR. VICTOR MILLER: The bottom line is I  
8 think that the Federal Communications Commission has  
9 actually sold itself short on how hideously successful  
10 some of its changes have been in the marketplace.

11 If you look at newspaper broadcast cross  
12 ownership, which has been around for 28 years, no  
13 relaxation of that, look at the Atlanta Journal  
14 Constitution, the Dallas Morning News, the Chicago  
15 Tribune, some of the preeminent newspapers in the  
16 United States of America. They have owned TV stations  
17 in the same markets. If you actually look at the  
18 quality of those newspapers, it is undeniably good.  
19 Now if you look at the television stations where  
20 there's co-ownership where they have newspapers and  
21 television stations, on average, that local news beats  
22 competitors in that marketplace by almost 60 percent  
23 and the third place operator by 200 percent in the  
24 early news, where there's no influence from prime time  
25 viewing whatsoever, because of the quality, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

w.nealrgross.com

1 increased quality that they can bring to the paper and  
2 the newspaper at the same time.

3 Now in terms of the radio, 60 percent of  
4 the radio stations were basically not profitable in  
5 1991. Now you have a situation where the market is  
6 completely stabilized. You've done a great job.  
7 There's been 9,000 stations that have transferred  
8 hands to \$120 billion worth of acquisitions and it's  
9 been, I think, a very great success.

10 Duopoly. You want to talk about duopoly.  
11 Sixty-five percent of all duopolies, those stations  
12 earn less than 5 percent of the revenue share and 80  
13 percent of the duopoly are related to the new  
14 networks. Telepature (Phonetic), UPN, WB, Univision,  
15 Fox, they gave birth to all that, to a very viable and  
16 robust and large station group.

17 And lastly, on the retransmission consent  
18 rules which you guys changed in 1993, that's added a  
19 tremendous number of new cable networks and we talked  
20 about diversity in that last panel. I just want to  
21 remind you the first 20 weeks of this year, one third  
22 of all the audience every night is watching A&E, ESPN,  
23 History Channel, Lifetime, American Movie Classics,  
24 Bravo, CNBC, MSNBC, Fox News, TVFoodNet, Home and  
25 Garden, Cartoons, CNN Headline News, Black

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

1323 RHODE ISLAND AVE, N W

WASHINGTON, D C 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Entertainment Television, Nickelodeon. That's a third  
2 of the viewers and how can you say that a lot of those  
3 networks aren't the kind of programming that you'd  
4 like our children to sit down and watch?

5 COMMISSIONER COPPS: That was not my  
6 question. My question is --

7 MR. VICTOR MILLER: No, I understand.

8 COMMISSIONER COPPS: Sitting here trying  
9 to judge what are the results going to be, what kind  
10 of a mad rush to consolidation are we going to see?

11 MR. VICTOR MILLER: You're going to see  
12 increased duopoly. You're going to see increased  
13 newspaper broadcast cross ownership because of the  
14 benefits we've run through. The marketplace compels  
15 change --

16 COMMISSIONER COPPS: We can debate the  
17 benefits and the negatives later on. We need to do  
18 that before we make a decision. I'm just trying to  
19 see what the market says. You're a guy from the  
20 market. You understand the market and you're telling  
21 me that there is going to be significant additional  
22 consolidation if we significantly change the rules?

23 MR. VICTOR MILLER: When you have 28 years  
24 of no rule change, there will be some changes in  
25 newspaper and broadcast. I don't think it's going to

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

**1323 RHODE ISLAND AVE., N.W.**

**WASHINGTON, D.C. 20005-3701**

**(202) 234-4433**

**[www.nealrgross.com](http://www.nealrgross.com)**



1 be a mad rush, no, I don't think.

2 COMMISSIONER COPPS: Mr. Rintels, you  
3 wanted to comment?

4 MR. RINTELS: I did. I'm not a man **of** the  
5 markets, but Tom Wolzien is and in his study which I  
6 referred to earlier, he pointed out that if the  
7 national ownership TV audience ownership cap is  
8 lifted, or relaxed, that there will be a mad rush to  
9 buy up local affiliates and that will occur  
10 particularly where there's overlap with Comcast or one  
11 of the other big cable providers because the networks  
12 will then use the retransmission consent for the cable  
13 operator to use that local station as a baseball bat  
14 to force them to take their other cable channels or to  
15 move their other cable channels up a tier or into the  
16 more basic level of service.

17 And this is something that really hasn't  
18 been explored, at least as far as I can see in the  
19 comments, that that cap is important in terms of  
20 programming diversity and staving off the programming  
21 oligopoly.

22 COMMISSIONER COPPS: Thank you.

23 MR. KRATTENMAKER: I was going to move to  
24 Chairman Powell, but if you wanted to --

25 CHAIRMAN POWELL: I just wanted to make a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 couple of quick points. I thought what we were here  
2 to do is to find out what the benefits and detriments  
3 of possible changes would be. That is **the** ultimate  
4 question. I think what the panel seems to universally  
5 agree with and if they don't, I find it fantastic, is  
6 that any given combination could be good or it could  
7 be bad for consumers. The only thing we should care  
8 about is if it's good for consumers or bad for  
9 consumers. There are a lot of groups who may not  
10 benefit from a combination, but the one that we care  
11 principally about is for consumers. And I think it is  
12 relevant, whether any changes that take place would be  
13 changes that are positive for the consuming public. I  
14 think that it's completely legitimate to point out the  
15 detriments that could follow, but I think as Mr.  
16 Munson pointed out, other people can also postulate  
17 anecdotes where consumers came out better **as** a  
18 consequent of the market structure change.

19 What the government's job is to do is to  
20 have a mechanism to filter the one from the other and  
21 that's really what we're trying to do, not just win a  
22 debate on whether consolidation is bad **or** not. Even  
23 in and of itself. Of course, it's both. It depends.

24 The other thing is I think that we have to  
25 accept certain realities.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Mr. Winston, the truth is, I think, in  
2 radio that the percentage of minority ownership has  
3 actually increased principally because of Mr. Liggins'  
4 company over all in the last few years and they're  
5 taking advantage of the same dynamics that other  
6 people are taking advantage of to be successful. It's  
7 not enough. I'm one of the biggest supporters of  
8 minority ownership policy of anyone as you know, but  
9 it is a change in the marketplace and it's real.  
10 There's an enormous increase in Spanish language  
11 programming that has occurred in the last few years.

12           One of the things that I'm going to throw  
13 open wide as a question because Professor, I think you  
14 alluded to, which is actually one of the concerns that  
15 I have, it's near the end you briefly suggested even  
16 noncommercial.

17           Now a lot of what I hear today which is  
18 very informative to me suggests that one of the  
19 problems isn't so much big, isn't **so** much corporate,  
20 but that it's commercial, but anything by definition  
21 that's commercial is profit seeking. I don't know how  
22 to differentiate between more meritorious groups, but  
23 some of the independent producers we're talking about  
24 are Sony Pictures or Carsey-Warner. These are not  
25 small, independent little guys seeking and they're not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 doing it for free. I commend them just as I commend  
2 any writer **or** producer, but we should put on the  
3 record there are very few people who are doing this  
4 business not for business.

5 But it seems to me one of the things  
6 that's very unique in the American system is that our  
7 television system is almost totally commercial. Most  
8 democracies deal with this threat to democracy by  
9 having government-sponsored programming, whether it be  
10 the BBC or those kinds of programming in which  
11 individuals are taxed and in the case of the U.K. \$150  
12 roughly a year to support a medium that doesn't have  
13 to be bound by these commercials.

14 So I'm curious that if people think the  
15 biggest problem in the United States is that as long  
16 as we have strong commercial incentives for the  
17 production of what we do and see, exclusively, we'll  
18 always have this problem and that maybe a greater  
19 commitment to public broadcasting or forms of public  
20 broadcasting is one of these things this country, the  
21 government ought to put more stock in.

22 I heard you mention that in passing, could  
23 you --

24 MR. KRATTENMAKER: I just have to  
25 interject. I have the sense that most people on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

w.nealrgross.com

1 panel would like to speak to that so I would ask could  
2 you each try to keep your remarks brief, because we're  
3 trying to get to audience comments.

4 Professor?

5 DR. OWEN: Yes. I think that's a very  
6 important point and it speaks precisely to the point  
7 that you made earlier which I have to respectfully  
8 object with. That is, I don't think the primary  
9 responsibility of this Commission is to protect the  
10 interests of consumers. That is certainly a piece of  
11 it. But it is to protect the interests of citizens  
12 and that includes a consumer side.

13 (Applause)

14 But also includes other features of the  
15 media landscape that do not lend themselves to this  
16 sort of consumer analysis and your point about public  
17 broadcasting is an excellent one. We are not talking  
18 about public broadcasting and I think that's a real  
19 shame because in fact, a lot of the dynamics that  
20 we're talking about today that we're concerned about  
21 have to do with how marketplaces operate in general  
22 and the kinds of economic forces that influence in the  
23 end the content more generally and it is absolutely  
24 important to have a noncommercial alternative to that  
25 if we're really going to talk about diversity, if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 we're really going to talk about meeting the needs of  
2 minority communities and so forth and that is public  
3 broadcasting. It's public radio. It's low power  
4 radio which is a piece of this as well.

5 (Applause)

6 MR. KRATTENMAKER: Thank you. Did any of  
7 the other panelists want to comment on the Chairman's  
8 question.

9 I'm sorry to be the bad guy in this. If  
10 each of you talk for two minutes, we're going to go  
11 all through the public comment period. So please try  
12 to keep your remarks brief.

13 Ms. Foley?

14 MS. FOLEY: Yes. I was just going to say  
15 that there is a point to what the Chairman said in  
16 that in other countries like the United Kingdom and  
17 Canada there is a strong, public service broadcasting  
18 component there. We don't have that in this country  
19 and part of the reason we don't have that is that we  
20 give our airways away to these commercial broadcasters  
21 and so that's why this Commission does have to look at  
22 the public interest aspect of this. It isn't a pure  
23 economic analysis. We've made a decision as a country  
24 to operate our media system this way. It may be a  
25 good way to operate. I'm not saying, I'm not arguing

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

**1323 RHODE ISLAND AVE., N.W.**

**WASHINGTON, D.C. 20005-3701**

**(202) 234-4433**

**www.nealrgross.com**

1       against it. I'm just saying that that then argues for  
2       us not to do an economic analysis and to really focus  
3       on in a proceeding like this the public interest.

4               MR. KRATTENMAKER: Thank you. Mr. Miller?

5               MR. MILLER: Again, all we're talking  
6       about when we talk about broadcast free over-the-air  
7       broadcast television as its own ecosystem, it has two  
8       pieces: a network that produces, that takes \$37  
9       billion worth *of* risk over the last three years to  
10      produce programs and local stations which try *to* serve  
11      the local marketplace. There are seven pressures that  
12      have been bearing down on both of these models and if  
13      not addressed in the medium or short term that free  
14      over-the-air broadcast system that we don't pay for  
15      that only has one single revenue stream will change  
16      markedly and we don't know how it's going to change,  
17      whether consumers are going to have to pay for that  
18      model or whether it's going to degrade the model so  
19      much that it's not a viable, robust market and as  
20      someone mentioned this morning, 15 percent of America  
21      still relies solely on over-the-air broadcasts as  
22      their only way of seeing television in their homes  
23      because they don't have cable or satellite.

24              MR. KRATTENMAKER: Mr. Munson?

25              MR. MUNSON: I can only say this. I can

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE, N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 never be embarrassed by the fact that my television  
2 stations make a profit. Part of that profit goes to  
3 our shareholders. Part of that profit goes back into  
4 the product. We've increased the number of hours of  
5 news and public affairs programming and sponsorships  
6 of events and been able to employ 200 families to  
7 provide a paycheck for them.

8 So any good broadcaster is going to pour  
9 part of the money into the product and part of the  
10 money into profits.

11 MR. CROTEAU: I agree with the Chairman  
12 that the complaints about programming that we've heard  
13 have been chiefly about programming that's responsive  
14 to what consumers want to see. And that does leave  
15 out of the count programs that consumers don't want to  
16 see, at least in large numbers. If it's in the public  
17 interest to subsidize such programming, that's fine,  
18 but public broadcasting is not the way to do it. If  
19 you want to subsidize programming, the programming  
20 should be subsidized as programming and be available  
21 for any kind of outlet. There's no reason to waste  
22 scarce spectrum resources on public broadcasting  
23 stations that viewers don't know how to tune in.

24 MR. KRATTENMAKER: Mr. Rintels.

25 MR. RINTELS: I take the Chairman's point

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

**1323 RHODE ISLAND AVE., N.W.**

**WASHINGTON, D.C. 20005-3701**

**(202) 234-4433**

**www.nealrgross.com**



about Sony, not a small business. But Carsey-Warner certainly was. It was two people with one telephone . And it was by virtue of their innovation and creativity and efforts that they became a large business.

So we're not pretending that the creative community or independent producers are not in this to make a profit, but my organization doesn't only represent those producers. We're talking about the people who simply work on shows and we're not able to do our best work when it's the networks who are calling all the creative shots and so I think that independent production was a wonderful way for small businesses, minorities and women to get into the television business. It took very little capital. All you needed was a great idea, but that's gone now. So really, the question for us is by virtue of the networks' control of the airways, should they be able to exclude all the other voices that are out there? We don't think that's right.

Should they be able to monopolize the production of programming and not compete in the marketplace of ideas. We just don't think that's right.

(Applause.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. KRATTENMAKER: Mr. Winston?

2 MR. WINSTON: I just wanted to respond to  
3 the Chairman's comment about Radio One. Certainly,  
4 we've very happy that Radio One has had all that  
5 growth over the last several years, but -- and you're  
6 right, the total number of African-American owned  
7 stations has grown primarily because of the growth of  
8 Radio One.

9 The concern I have, of course, however, is  
10 looking at BET. The African-American community pinned  
11 all of its hopes in television on one company. That  
12 company sold out. Radio One is a publicly traded  
13 company like every other publicly traded company, it's  
14 under pressure from Wall Street financial sources to  
15 keep showing revenue growth or find itself under  
16 pressure to sell out too.

17 I think that the African-American  
18 community shouldn't say that we're going to pin all  
19 our hopes on one company no matter which company it  
20 is, no matter how great they are. And I don't think  
21 the Commission should ask us to do that either.

22 Thank you.

23 MR. KRATTENMAKER: Commissioner Abernathy?

24 COMMISSIONER ABERNATHY: Thank you.  
25 You've brought up a lot of points. I have many

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 questions, but I know where to find you guys. I will  
2 submit my questions. I'd rather hear from all of you  
3 and if the audience has any questions, I'm happy to  
4 jump in, but I'm just going to pass for now.

5 MR. KRATTENMAKER: Thank you.  
6 Commissioner Martin?

7 COMMISSIONER MARTIN: I just have one  
8 question.

9 Mr. Miller, you talked about the  
10 importance of changing some of our rules for the  
11 maintenance ~~of~~ free over-the-air broadcasting and  
12 talked about the limited revenue stream that they have  
13 and yet the increased costs that they've incurred,  
14 particularly going through the digital transition.

15 Isn't there an opportunity though for them  
16 also to have additional revenue streams from that if  
17 they chose to multi-cast in a digital context? If  
18 that was the case, are there other things that  
19 inhibit, maybe digital carriage issues, or whatever,  
20 but are there -- is that not a potential other  
21 additional revenue stream for them that would have  
22 some positive benefits on the other side?

23 MR. MILLER: When you spent \$4 to \$6  
24 billion are you likely to get a real return on that  
25 investment and that's the unanswered question right

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 now.

2 As you know, we have problems with the  
3 rights, the rights when you digitally send something  
4 over the year that it could be stolen by someone.  
5 That has not been fixed yet.

6 We don't have the transmission standard is  
7 still not -- we don't know whether it's a robust  
8 standard yet and you've certainly helped with tuner  
9 issues and cable operability issues which were not  
10 solved, even six months ago. And then you have the  
11 consumer that now has to spend a lot **of** money to  
12 change a TV set and as you know, the average **TV** set  
13 lasts anywhere between 15 and 20 years.

14 **So** there's a lot of pieces that have to be  
15 solved for it to be a robust system, but yes,  
16 philosophically will we be able to multicast?  
17 Absolutely. But right now, we don't have all the  
18 pieces in place to even approach that yet.

19 MR. KRATTENMAKER: My thanks to the  
20 panelists. You all were terrific. Thank you for  
21 braving the weather and coming down here.

22 We're now going to turn to a public  
23 comment portion **of** the meeting. I notice that it's  
24 supposed to end in 10 minutes. We'll go on for at  
25 least 20.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N W  
WASHINGTON, D C 20005-3701

1 Dane, I think you have, are there some  
2 people who are waiting from last time to speak?

3 MR. SNOWDEN: Sure. I would ask that  
4 Allison Bresnick, Dan Pottle, Christopher Maxwell,  
5 Raine Burrows, Silver Persinger and Bob Wolfner be the  
6 first to go to the microphones.

7 While they're doing that, I want to have a  
8 scheduling update. What we're going to do is we're  
9 going to take this all the way to about 2:40 and then  
10 we're going to start the next panel immediately after  
11 that so the next panelists please get ready at 2:40.  
12 We're going to begin at that point. So we'll start  
13 with Allison. And again, you all have two minutes.

14 MR. KRATTENMAKER: We're going to give you  
15 two minutes. The red light will come on and will you  
16 please stop at the end of your time so others can  
17 speak.

18 MS. BREZENECHEK (Phonetic): My name is  
19 Allison Brezenchek and I am the Vice President of  
20 Media Reform for the Action Coalition for Media  
21 Education. I want to first just specifically thank  
22 Commissioner Copps for all of his advocacy efforts  
23 regarding the public interest of the mass media. We  
24 really appreciate your commitment to that.

25 First of all, I want to say that being

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 able to communicate to the public is power. Mass  
2 communication. And one of the things we need to pay  
3 attention to is what's not there and I want to  
4 specifically talk about what hasn't been paid  
5 attention to related to these FCC hearings and media  
6 deregulation. Why haven't these issues been in the  
7 mass media? The mass media is there to inform us and  
8 to let us know about things that are related to the  
9 public interest? Why haven't they been covering these  
10 issues?

11 The only reason that I can think of is  
12 because of the financial interests that they have in  
13 getting further deregulation to occur. And that is a  
14 big conflict between financial interests and public  
15 interests that are not being addressed here.

16 (Applause)

17 I also wanted to comment on programming  
18 content. We've had some controversy in the panel  
19 about is programming content appropriate to be  
20 discussing here and why is that being commented on? I  
21 think that again goes back to the public not being  
22 informed. The reason why the public doesn't comment  
23 on programming content is because most of them  
24 probably don't know the FCC exists, don't know what  
25 deregulation is and don't know the steps to take to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 voice their concerns. The only thing that they do  
2 know is that they don't like what they see on  
3 television. What other means do they have to comment  
4 about it other than program content? And therefore, I  
5 think that's why they comment on that specifically.  
6 If the mass media was educating them about  
7 deregulation and things of that nature, then they  
8 would have more to talk about.

9 Related to consolidation, I think that  
10 consolidation leads to the recycling of programming.  
11 A specific example is --

12 MR. KRATTENMAKER: Thank you.

13 (Applause)

14 MR. PODWELL: Hi. I'm sure some of you  
15 are wondering why we dressed like mad scientists  
16 today? And it is in response to a comment made by the  
17 Chairman that he only wants to hear from media  
18 scientists and that our commentary has been too  
19 emotional and too political.

20 Well, I'm not a scientist, I am a tech, a  
21 very small radio station, WPEB, in West Philadelphia  
22 and we don't run plugs. We don't do public  
23 fundraising campaigns. We just have benefits, mostly  
24 in the forms of parties. Occasionally, we get  
25 donations from our friends. We're a very small

**NEAL R. GROSS**

**COURT REPORTERS AND TRANSCRIBERS**

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 station and we've had a few grants.

2 I think our existence, it's a leftover  
3 from the 1970s. It's an old Class D license and our  
4 existence is proof that the public interest is not the  
5 same thing as business interest because we're the only  
6 kind **of** voice for the kind of community in which we  
7 exist.

8 I know that we're talking about  
9 deregulation. I have to say I think that Spectrum  
10 Management plays into the equation here. LPFM as was  
11 these reforms that happened during Chairman Kennard's  
12 administration was a big step forward and it was  
13 special interests, it was business interests such as  
14 NPR, National Association of Broadcasters that pushed  
15 Congress to eviscerate it. There was a rider attached  
16 to a budget appropriations bill sponsored by Senator  
17 Rod Grahams who not surprisingly soon after lost the  
18 election which is what happens -- which is what  
19 ideally happens.

20 MR. KRATTENMAKER: Mr. Podwell, thank you  
21 very much.

22 (Applause.)

23 Mr. Maxwell.

24 MR. MAXWELL: Thank you. My name is  
25 Christopher Maxwell. I'm the Vice President of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 Virginia Center for Public Press. We are a low power  
2 FM applicant. We train people to create their own  
3 television shows and thus tell their stories their way  
4 without the filter of too many other influences,  
5 editors, owners, advertisers, underwriters, etcetera.  
6 So you'll hear a lot of things on our programs that  
7 may not be perfectly polished, but we get a lot of  
8 viewers because we have authenticity to offer. So we  
9 use say, for example, an ancient titler, an omega from  
10 1984, but it gets the titles up and it doesn't seem to  
11 matter to our audience.

12 A lot of the money problems come from  
13 concerns about creating a product for a thin, rich  
14 slice at the top or the great masses and not  
15 necessarily kind of all the leftover -- people in  
16 between.

17 I'm concerned that the studies, however,  
18 unfortunately, are irrelevant. They're invalid.  
19 Here's the problem.

20 Mr. Powell, you voted against low power  
21 **FM**, in part, you said because you were concerned that  
22 LPFM would take some listeners away from commercial  
23 minority broadcasters that were on the edge of  
24 bankruptcy and that might push them over or cause  
25 other problems. Well, okay, but in band on channel

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202)234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 digital audio broadcasting has been proven by tests  
2 and by Clear Channel's own testimonies and tests to  
3 jam the signals of stations adjacent to an ibox  
4 station. That doubling of the stations on the dial  
5 then removes those stations from people's selections  
6 and choices. That then means we go from say 33  
7 stations on a car radio in Richmond down to say 22 or  
8 23. And what if that one station that disappeared was  
9 the one station that spoke to your soul, the one  
10 station that carried your news, your religion, your  
11 viewpoint, your ethnic news, your whatever? Then it's  
12 a 100 percent loss.

13 So that means that we have already  
14 accepted --

15 MR. KRATTENMAKER: Thank you, Mr. Maxwell.

16 Your time is up. **You** can submit your information for  
17 the record, as you continue.

18 Ms. Burrows, please.

19 MS. BURROWS: Hi. I'm the mother **of** a  
20 2-year-old living here in Richmond and I'm very  
21 concerned about the deteriorating quality of  
22 television in this country. When I was a child, my  
23 parents made educational films and I sometimes  
24 appeared in them. They were often shown on  
25 television, not only on PBS, but also the networks.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealgross.com](http://www.nealgross.com)